

NOTICE OF FILING

Details of Filing

Document Lodged: Statement of Agreed Facts
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 22/12/2023 4:40:27 PM AEDT
Date Accepted for Filing: 22/12/2023 4:40:31 PM AEDT
File Number: NSD475/2023
File Title: ALEXANDER GREENWICH v MARK WILLIAM LATHAM
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 1
Rule 2.13(2)

Statement of Agreed Facts and Issues

No. NSD 475 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

ALEXANDER HART GREENWICH

Applicant

MARK WILLIAM LATHAM

Respondent

AGREED ISSUES IN DISPUTE

THE PARTIES AGREE THAT THE FOLLOWING ISSUES ARE IN DISPUTE:

Publication – first matter complained of (the Primary Tweet)

1. Whether the Primary Tweet was immediately accessible to the Respondent's Twitter followers, although noting it is *not* in dispute that immediately after the Respondent posted the Primary Tweet to his Twitter account:¹
 - a. the Primary Tweet was available for download from that online platform;
 - b. about 66,700 Twitter accounts were following the Respondent's Twitter Account;
 - c. persons following the Respondent's Twitter Account may have downloaded and viewed the Primary Tweet; and
 - d. persons viewed the Primary Tweet.
2. The time at which the Respondent deleted the Primary Tweet from his Twitter account on 30 March 2023 (and deletion on that date is an Agreed Fact), namely, whether:
 - a. the Respondent deleted the Primary Tweet at about 2:00pm on 30 March 2023;²
or
 - b. the Respondent deleted the Primary Tweet before 12:30pm on 30 March 2023.³

¹ Statement of Claim, [11] cf. Defence, [11]

² Statement of Claim, [12]

³ Defence, [12(b)]

3. The extent to which the Primary Tweet was published.⁴

Identification – Primary Tweet

4. Whether the Applicant was reasonably identified by readers of the Primary Tweet who read the Metcalfe Tweet, as alleged in paragraph 14 of the Statement of Claim⁵ and if so:
- a. the number of persons who reasonably identified the Applicant.

Defamatory Meaning – Primary Tweet

5. Whether the Primary Tweet in its natural and ordinary meaning carried the following imputation, or an imputation not different in substance:⁶
- a. *Mr Greenwich engages in disgusting sexual activities.*
6. Whether the Primary Tweet together with the aid of the extrinsic facts particularised in paragraph 16 of the Statement of Claim carried the following imputation by way of true innuendo to persons who were aware of those facts:⁷
- a. *Mr Greenwich is not a fit and proper person to be a member of the NSW Parliament because he engages in disgusting sexual activities.*
7. Whether any imputations the Court finds the Primary Tweet carried were defamatory of the Applicant.⁸

Defamatory Meaning – DT Quotes

8. Whether the DT Quotes in their natural and ordinary meaning carried the following imputation, or an imputation not different in substance:⁹
- a. *Mr Greenwich is a disgusting human being who goes to schools to groom children to become homosexual.*
9. Whether the DT Quotes together with the aid of the extrinsic fact particularised in paragraph 25 of the Statement of Claim carried the following imputation by way of true innuendo to persons who were aware of that fact:¹⁰
- a. *Mr Greenwich is not a fit and proper person to be a member of the NSW Parliament because he goes to schools to groom children to become homosexual.*

⁴ Statement of Claim, [13] cf. Defence, [13]

⁵ Statement of Claim, [14] cf. Defence, [14]

⁶ Statement of Claim, [15] and [17] cf. Defence, [15] and [17]

⁷ Statement of Claim, [16] and [17] cf. Defence, [16] and [17]

⁸ Statement of Claim, [15], [16] and [17] cf. Defence, [15], [16] and [17]

⁹ Statement of Claim, [24] and [26] cf. Defence, [24] and [26]

¹⁰ Statement of Claim, [30] cf. Defence [30]

Defamatory Meaning – DT Article

10. Whether the DT Article in its natural and ordinary meaning carried the following imputation, or an imputation not different in substance:¹¹

a. *Mr Greenwich is a disgusting human being who goes to schools to groom children to become homosexual.*

11. Whether the DT Article together with the aid of the extrinsic fact particularised in paragraph 25 of the Statement of Claim carried the following imputation by way of true innuendo to persons who were aware of that fact: ¹²

a. *Mr Greenwich is not a fit and proper person to be a member of the NSW Parliament because he goes to schools to groom children to become homosexual.*

Republication – DT Quotes in DT Article

12. Whether the Respondent is liable in defamation for the publication of the DT Quotes in the DT Article.¹³

13. The extent of publication of the DT Article.¹⁴

Legal and factual issues - Serious Harm

14. Whether the publication by the Respondent of the Primary Tweet has caused, or is likely to cause serious harm to the reputation of the Applicant. ¹⁵

15. Whether the publication by the Respondent of the DT Quotes has caused, or is likely to cause serious harm to the reputation of the Applicant.¹⁶

16. Whether any republications by the Respondent of the DT Quotes in the DT Article the Court finds the Respondent liable in defamation for has caused or is likely to cause serious harm to the reputation of the Applicant. ¹⁷

17. Whether and to what extent the publication of each of the Primary Tweet, DT Quotes or DT Articles caused the publications particularised in paragraph 30 of the Statement of Claim at 30(a)(i) to (xv), (c)(i) to (xi), (d)(i) to (xxiii), (e), and (e)(ii)(A) to (J), (f), (f)(i) to (iv), (g), (g)(i), (ii)(A) to (E), (h). ¹⁸

¹¹ Statement of Claim [20],[24],[26] cf. Defence [20(b)(ii)]

¹² Statement of Claim [20], [25], [26] cf. Defence [20(b)(ii)]

¹³ Statement of Claim, [20] cf. Defence [20]

¹⁴ Statement of Claim, [22] cf. Defence [22]

¹⁵ Statement of Claim, [30] cf. Defence [30]

¹⁶ Statement of Claim, [30] cf. Defence, [30]

¹⁷ Statement of Claim, [20], [30] cf. Defence, [20], [30]

¹⁸ Statement of Claim, [30] cf. Defence [30(f)]

18. Whether and to what extent to which the publications particularised in paragraph 30 of the Statement of Claim at 30(a)(i) to (xv), (c)(i) to (xi), (d)(i) to (xxiii), (e), and (e)(ii)(A) to (J), (f), (f)(i) to (iv), (g), (g)(i), (ii)(A) to (E), (h) are relevant to the determination of the serious harm element defined in s 10A of the *Defamation Act 2005 (NSW)* (***Defamation Act***) for each of the Primary Tweet, DT Quotes, or DT Article.¹⁹

19. Whether and to what extent the matters pleaded by the Respondent in paragraph 30 of the Defence are established and relevant to the determination of the serious harm element for each of the Primary Tweet, DT Quotes, or DT Article.²⁰

Defence of common law qualified privilege – reply to attack – Primary Tweet (Defence, paragraphs [38] to [48])

20. Whether the Respondent has established the Primary Tweet was published on an occasion of qualified privilege at common law, namely:

- a. Whether the Applicant made attacks on the Respondent which were reported, as alleged in paragraphs 38 to 44 of the Defence.²¹
- b. If so, whether the Respondent had a duty or interest to publish the Primary Tweet to respond to any attacks found by the Court.²²
- c. Whether each recipient of the Primary Tweet had a reciprocal interest in receiving and reading the Primary Tweet”.²³
- d. If the Court finds that the Primary Tweet was published in reply to any of the alleged attacks and the recipients of the Primary Tweet had a reciprocal interest as alleged, whether the Primary Tweet was relevant or germane to the privileged occasion.²⁴

21. Whether the proportionality of the Primary Tweet to any attacks the Court finds the Applicant made on the Respondent is relevant on the issue of whether an occasion of privilege exists or the later stage whether the Respondent was actuated by malice in publishing the Primary Tweet, and if relevant to whether an occasion of privilege exists was the Primary Tweet proportionate to the attack.²⁵

¹⁹ Statement of Claim, [30] cf. Defence [30]

²⁰ Defence [30] cf. Statement of Claim, [30]

²¹ Defence, [38]

²² Defence, [45]

²³ Defence, [47]

²⁴ Reply, [3(a)]

²⁵ Reply, [3(a)]

22. If the Respondent establishes the Primary Tweet was published on a privileged occasion, whether the defence is defeated by malice, namely whether the Applicant has established the Respondent was actuated by malice in publishing the Primary Tweet in that he published the Primary Tweet predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.²⁶

Defence of common law qualified privilege – DT Quotes and DT Article (Defence, paragraphs [49] to [56])

23. Whether the publications pleaded in paragraph 49 of the Defence constituted attacks on the Respondent, as alleged.²⁷

24. Whether as at 1 April 2023, the Respondent had not made any public comment about the “controversy” alleged in paragraph 50 of the Defence.²⁸

25. As to the journalist, Linda Silmalis of *The Daily Telegraph*:

a. Whether on or about 1 April 2023, the Respondent received a text message from Ms Silmalis, asking him for comment about the condemnation of the Primary Tweet and for the reason why the Respondent deleted the Primary Tweet, as alleged in paragraph 52 of the Defence.²⁹

b. Whether on or about 1 April 2023, the Respondent sent the DT Quotes as a text message to Ms Silmalis in response to her text message seeking comment from the Respondent, as alleged in paragraph 53 of the Defence.³⁰

c. Whether Ms Silmalis had an interest in receiving the DT Quotes from the Respondent, as alleged in paragraph 54 of the Defence.³¹

d. Whether the Respondent had a reciprocal interest in sending the DT Quotes to Ms Silmalis, as alleged in paragraph 55 of the Defence.³²

26. If the reciprocal interest to publish the DT Quotes is established by the Respondent, whether the DT Quotes were relevant to the privileged occasion.

27. If the Respondent establishes the DT Quotes were published on a privileged occasion, whether the defence is defeated by malice, namely whether the Applicant has established

²⁶ Reply, [3(b)]

²⁷ Defence, [49]

²⁸ Defence, [50], [51]

²⁹ Defence, [52]

³⁰ Defence, [53]

³¹ Defence, [54]

³² Defence, [55]

that the Respondent was actuated by malice in publishing the DT Quotes in that he published the DT Quotes predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.³³

Defence of common law qualified privilege – reply to attack – DT Quotes and DT Article (Defence, paragraphs [57] to [60])

28. Whether the Respondent has established the elements of the defence, namely:

- a. Whether the attacks were made on the Respondent as alleged in paragraph 49 of the Defence.³⁴
- b. If so, whether the DT Quotes and any republication of the DT Quotes in the DT Article were published pursuant to a duty or interest to respond to any attacks found by the Court.³⁵
- c. Whether Ms Silmalis and all readers of the DT Article had a reciprocal interest in receiving and reading the DT Quotes".³⁶
- d. If the Court finds that the DT Quotes and DT Article published in reply to any of the alleged attacks and the recipients or potential recipients of the DT Quotes and DT Article had a reciprocal interest as alleged whether the DT Quotes were relevant or germane to the privileged occasion.³⁷
- e. If the proportionality of the DT Quotes to any of the alleged attacks the Court finds is relevant on the issue of whether an occasion of privilege exists, were the DT Quotes proportionate to the attacks found to have been made such that the DT Quotes were published on a privileged occasion.³⁸

29. If the Respondent establishes the elements of the Defence, whether the defence is defeated by malice, namely whether the Applicant had established that Respondent was actuated by malice in publishing the DT Quotes in that he published the DT Quotes predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.³⁹

³³ Reply, [4]

³⁴ Defence, [49], [57]

³⁵ Defence, [57]

³⁶ Defence, [59]

³⁷ Reply, [5(a)]

³⁸ Reply, [5(a)]

³⁹ Reply, [5(b)]

Defence of statutory qualified privilege pursuant to s 30 of the *Defamation Act* - DT Quotes and DT Article (Defence, paragraphs [61] to [67])

30. Whether the Respondent has established the elements of the defence under s 30 of the *Defamation Act*, namely:

- a. Pursuant to s 30(1)(a) and s 30(2), whether Ms Silmalis and the readers of the DT Article had an apparent interest in the information about the Respondent's comment on the "controversy" alleged in paragraph 50 of the Defence, and his reasons for deleting the Primary Tweet, in that the Respondent believed that Ms Silmalis and the readers of the DT Article had that interest at the time the DT Quotes and DT Article were published.⁴⁰
- b. Pursuant to s 30(2) and further to (a) above, whether the Respondent believed on reasonable grounds that Ms Silmalis and readers of the DT Article had the alleged interest.⁴¹
- c. Pursuant to s 30(1)(b), whether the DT Quotes were published to the recipient in the course of giving to the recipient information on the relevant subject.
- d. Pursuant to s 30(1)(c), whether the conduct of the Respondent in publishing the DT Quotes was reasonable in all the circumstances having regard to the matters in s 30(3), and the matters alleged in paragraph 64 of the Defence.⁴²

31. If the Respondent establishes the elements of the Defence, whether the defence is defeated by malice, namely whether the Applicant has established that the Respondent was actuated by malice in publishing the DT Quotes in that he published the DT Quotes predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.⁴³

Defence of common law qualified privilege – alleged "Australian Constitution extension" – DT Quotes and DT Article (Defence, paragraphs [68] to [70])

32. Whether the DT Quotes concerned governmental and political matters in Australia as alleged in paragraph 68 of the Defence.⁴⁴

33. Whether the Respondent's conduct in publishing the DT Quotes was reasonable in the circumstances by reason of the matters pleaded in paragraph 64 of the Defence.⁴⁵

⁴⁰ Defence, [61], [62]

⁴¹ Defence, [63]

⁴² Defence, [64]

⁴³ Reply, [6]

⁴⁴ Defence, [68]

⁴⁵ Defence, [64], [69]

34. Whether the Respondent published the DT Quotes on an occasion of qualified privilege as alleged in paragraphs 69 and 70 of the Defence.⁴⁶
35. If the Respondent establishes the DT Quotes were published or republished on an occasion of qualified privilege, whether the defence is defeated by malice, namely whether the Applicant has established that the Respondent was actuated by malice in publishing the DT Quotes in that he published the DT Quotes predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.⁴⁷

Defence of public interest pursuant to s 29A of the *Defamation Act* – DT Quotes and DT Article (only)

36. Taking into account all of the circumstances of the case pursuant to s 29A(2) and (3) of the *Defamation Act*, whether the Respondent has established the elements of the defence, namely:
- a. Pursuant to s 29A(1)(a), whether the DT Quotes and any republication of them concerned an issue of public interest by reason of the matters alleged in paragraph 71 of the Defence.⁴⁸
 - b. Pursuant to s 29A(1)(b), whether the Respondent reasonably believed that the publication of the DT Quotes was in the public interest, including by reason of the matters pleaded in paragraphs 64, 72, 73 of the Defence and having regard to whether the Applicant has establish that the Respondent was actuated by malice.⁴⁹
37. Whether a defence under s29A of the *Defamation Act* can be defeated by a plea of malice, and if so whether the defence is defeated by malice, namely whether the Applicant has established that the Respondent was actuated by malice in publishing the DT Quotes in that he published the DT Quotes predominantly for the improper purpose of exposing the Applicant to public humiliation, ridicule, contempt and hatred by reason of the Applicant's sexuality.

Defence of honest opinion pursuant to s 31 of the *Defamation Act* - Primary Tweet (Defence, paragraphs [75] to [79])

38. Whether the Respondent has established the elements of the defence under s 31 of the *Defamation Act*, namely:

⁴⁶ Defence, [69], [70]

⁴⁷ Reply, [7]

⁴⁸ Defence, [71]

⁴⁹ Defence, [64], [72], [73]

- a. Pursuant to s 31(1)(a), whether the Primary Tweet, insofar as it carried a defamatory imputation, was an expression of opinion of the Respondent rather than a statement of fact.⁵⁰
- b. Pursuant to s 31(1)(b) and (c), if the Court finds the Primary Tweet insofar as it carried a defamatory imputation, was an expression of opinion of the Respondent rather than a statement of fact:
 - i. Whether the opinion related to a matter of public interest by reason of the matters alleged in paragraph 76 of the Defence.⁵¹
 - ii. Whether the opinion is based on proper material, as alleged in paragraphs 77 and 78 of the Defence.⁵²

39. In the event the Respondent establishes the elements of the defence under s31 of the Defamation Act, whether the defence is defeated pursuant to s 31(4)(a) because the opinion was not honestly held by the Respondent, having regard to the matters pleaded in paragraph 9 of the Reply.⁵³

Defence of honest opinion pursuant to s 31 of the *Defamation Act* – DT Quotes and DT Article (Defence, paragraphs [80] to [84])

40. Whether the Respondent has established the elements of the defence under s 31 of the *Defamation Act*, namely:

- a. Pursuant to s 31(1)(a), whether the DT Quotes and any republication of them, insofar as they carried a defamatory imputation, was an expression of opinion of the Respondent rather than a statement of fact.⁵⁴
- b. Pursuant to s 31(1)(b) and (c), if the Court finds the DT Quotes and any republication of them, insofar as they carried a defamatory imputation, contained an expression of opinion of the Respondent rather than a statement of fact:
 - i. Whether the opinion related to a matter of public interest by reason of the matters alleged in paragraph 81 of the Defence.⁵⁵
 - ii. Whether the opinion is based on proper material, as alleged in paragraphs 82 and 83 of the Defence.⁵⁶

⁵⁰ Defence, [75]

⁵¹ Defence, [76]

⁵² Defence, [77], [78]

⁵³ Reply, [9]

⁵⁴ Defence, [75]

⁵⁵ Defence, [81]

⁵⁶ Defence, [82], [83]

41. In the event the Respondent establishes the elements of the defence under s31 of the Defamation Act, whether the defence is defeated pursuant to s 31(4)(a) because the opinion was not honestly held by the Respondent, having regard to the matters pleaded in paragraph 10 of the Reply.⁵⁷

Damages

42. Whether the Applicant is entitled to any award of damages in respect of either or both of the Primary Tweet and/or the DT Quotes.⁵⁸

43. If the Applicant is entitled to any award of damages:

- a. Are the following documents are admissible for the purpose of the Court determining any award of aggravated damages:
 - i. that part of the concerns notice sent on behalf of the Applicant dated 19 April 2023 containing an offer; and
 - ii. the response to the concerns notice sent on behalf of the Applicant dated 17 May 2023?⁵⁹
- b. Is the Applicant entitled to an award of aggravated damages, including by reason of the matters pleaded in paragraph 33 of the Statement of Claim and paragraph 2 of the Reply?⁶⁰
- c. Are the damages mitigated by reason of the matters pleaded in paragraph 37 of the Defence? Namely:
 - i. The conduct of the Applicant in making an alleged attack as defined in paragraph 38 of the Defence.
 - ii. Public statements made by the Applicant that allegedly vindicated his own reputation, as pleaded in paragraph 37(b) of the Defence.
- d. What is the appropriate award of damages?
- e. What is the appropriate award of interest on damages pursuant to ss 51A, 52 of the *Federal Court of Australia Act 1976 (Cth)* (**Federal Court Act**)?

Other proposed relief

⁵⁷ Reply, [10]

⁵⁸ Statement of Claim, [27] to [29] cf. Defence [27] to [29]

⁵⁹ Statement of Claim, [31], [32], [33.3], [33.4], and see Defence, [31], [32], [33(d)], [33(e)]

⁶⁰ Statement of Claim [33], Reply [2] cf. Defence [33]

44. Whether a permanent injunction ought to be made against the Respondent as proposed by the Applicant (or in such other terms as the Court deems fit).⁶¹

Costs

45. Whether any costs order should be made in favour of the Applicant or the Respondent.

46. If any costs order is to be made, what are the appropriate terms of that costs order?

⁶¹ Statement of Claim, [34] to [36] cf. Defence [34] to [36]

AGREED FACTS

THE FOLLOWING FACTS ARE NOT IN ISSUE ON THE PLEADINGS AND ARE OTHERWISE AGREED BETWEEN THE PARTIES, PURSUANT TO S 191 OF THE *EVIDENCE ACT 1995* (CTH) AND AGREED WITHOUT PREJUDICE TO THE PARTIES' ABILITY TO RELY ON FURTHER EVIDENCE ABOUT THE MATTERS ADDRESSED BELOW:

Twitter / "X" Platform

1. At the time of the alleged publications of the matters complained of, there was a social media platform called "Twitter".
2. At the time of trial, the social media platform formerly known as Twitter is now known as the "X" platform.⁶²

The Applicant

3. The Applicant:
 - a. is an Australian politician who is openly homosexual;⁶³
 - b. is an independent elected member of the NSW Parliament for the electoral district of Sydney, who has held that position for almost 11 years;⁶⁴
 - c. is an advocate for his constituents in Sydney, and others including the lesbian, gay, bisexual, transgender, queer/questioning, intersex and asexual (**LGBTQIA+**) community, families with children, women, people who are homeless, people in late stages of advance disease seeking assisted dying, people with disabilities and First Nations people;⁶⁵
 - d. was the former convenor of Australian Marriage Equality.⁶⁶

The Respondent

4. The Respondent:
 - a. was at the date of the Defence, a well-known Australian politician;⁶⁷
 - b. is the former leader of the Federal Australian Labor Party and Federal Opposition;⁶⁸

⁶² Defence, [7(b)(i)], [7(b)(ii)]

⁶³ Statement of Claim, [6.1] cf. Defence, [6(a)]

⁶⁴ Statement of Claim, [6.2] cf. Defence, [6(b)]

⁶⁵ Statement of Claim, [6.3] cf. Defence, [6(b)]

⁶⁶ Statement of Claim, [6.4] cf. Defence, [6(c)]

⁶⁷ Statement of Claim, [7.1] cf. Defence, [7(a)]

⁶⁸ Statement of Claim, [7.2] cf. Defence, [7(a)]

- c. is a member of the NSW Legislative Council, and has been since 2019;⁶⁹
- d. was the leader of the One Nation Party in NSW from 2018 until 14 August 2023.⁷⁰

The Respondent's Twitter Account

- 5. The Respondent is the operator and publisher of content on the X platform (formerly Twitter), with the handle '@RealMarkLatham' (**the Respondent's Twitter Account**).⁷¹
- 6. As at the date the Statement of Claim was filed in the proceedings, the Respondent's Twitter Account was followed by about 66,800 Twitter accounts.⁷²

The Respondent's Facebook Account

- 7. The Respondent is the operator and publisher of content on an account page on the Facebook platform known as 'Mark Latham's Outsiders' (**the Respondent's Facebook Account**).⁷³
- 8. As at the date the Statement of Claim was filed in the proceedings, the Respondent's Facebook Account was followed by about 136,000 Facebook accounts.⁷⁴
- 9. The Respondent's Facebook Account until the time the Defence was filed contained:⁷⁵
 - a. Facebook posts of the Respondent published in the first person;
 - b. a profile photograph of the Respondent;
 - c. a cover photograph of the Respondent with the text, "*Mark Latham NSW Legislative Council One Nation NSW*"; and
 - d. an "intro" description containing the text, "*Member of the NSW Legislative Council*".

The Respondent's Instagram Account

- 10. The Respondent is the operator and publisher of content on an account page on the Instagram platform with the handle '@MarkLathamsOutsiders' (**the Respondent's Instagram Account**).⁷⁶
- 11. As at the date the Statement of Claim was filed in the proceedings, the Respondent's Instagram Account was followed by about 12,400 Instagram accounts.⁷⁷

⁶⁹ Statement of Claim, [7.3] cf. Defence [7(a)]

⁷⁰ Statement of Claim, [7.4] cf. Defence [7(a)]

⁷¹ Defence, [7(b)(ii)]

⁷² Defence, [7(b)(ii)]

⁷³ Defence, [7(c)(i)]

⁷⁴ Defence, [7(c)(i)]

⁷⁵ Statement of Claim, [7.6(a) to (d)] cf. Defence, [7(c)(ii)]

⁷⁶ Defence, [7(d)(i)]

⁷⁷ Defence, [7(d)(i)]

12. The Respondent's Instagram Account contains:⁷⁸

- a. a profile photograph of the Respondent's book, *Take Back Australia*;
- b. a display name with the text, "*Mark Latham NSW MLC*"; and
- c. various photographs of the Respondent, including 'selfies' of the Respondent.

The Belfield Incident and statements by the Applicant (noting additional proposed fact that does not appear in pleadings)

13. On 21 March 2023, the Respondent spoke at St Michael's catholic church hall at Margaret Street in Belfield, NSW (**Speech Event**).⁷⁹

14. A violent incident occurred where LGBTQ protesters were confronted outside the Speech Event (**the Belfield Incident**).⁸⁰

15. Police were required to respond to the Belfield Incident.

16. On 22 March 2023, the Applicant had a telephone call with Olivia Ireland of *The Sydney Morning Herald* about the Belfield Incident, during which he said words to the effect (**Greenwich SMH Statement**).⁸¹

"Mark Latham is a disgusting human being and people who are considering voting for One Nation need to realise they are voting for an extremely hateful and dangerous individual who risks causing a great deal of damage to our state."

17. On 22 March 2023, the Applicant recorded a video media statement about the Violent Belfield Incident in the terms in the **annexed** transcript marked "**Annexure 1**" to this document (**Greenwich Video Statement**).⁸²

18. On 22 March 2023, The Sydney Morning Herald published the Greenwich SMH Statement as part of an article on its website titled "Video shows LGBTQ protesters pleading for help outside Mark Latham event".⁸³

19. On 22 March 2023, The Sydney Morning Herald published the Greenwich SMH Statement as part of an article on its website titled "Time to rise: Christian activist charged after protest violent".⁸⁴

⁷⁸ Statement of Claim, [7.7(a) to (c)] cf. Defence, [7(d)(ii)]

⁷⁹ Defence, [82(d)]

⁸⁰ See part of Defence, [82(e)]

⁸¹ See part of Defence, [38]

⁸² See part of Defence, [41]

⁸³ Defence, [39]

⁸⁴ Defence, [42]

20. On 23 March 2023, The Sydney Morning Herald published the Greenwich SMH Statement in its print edition under the title “Police keeping eye on militant religious groups after protests”.⁸⁵

Publication of the Primary Tweet

21. On or about 22 March 2023, a Twitter user, Susan Metcalfe, posted a Tweet (**the Metcalfe Tweet**) which:⁸⁶

- a. linked to an article in *The Sydney Morning Herald* headed, “Video shows LGBTQ protesters pleading for help outside Mark Latham event”, with a thumbnail photograph showing police officers amidst a crowd of people; and
- b. contained the text:

“Mark Latham is a disgusting human being and people who are considering voting for One Nation need to realise they are voting for an extremely hateful and dangerous individual who risks causing a great deal of damage to our state’ – Alex Greenwich”.

22. At about 10.13am on 30 March 2023, the Respondent posted via the Respondent’s Twitter Account, and thereby made available for publication, a comment on the Metcalfe Tweet as follows (being the Primary Tweet):⁸⁷

“Disgusting? How does that compare with sticking your dick up a bloke’s arse and covering it with shit?”

23. The Primary Tweet appeared on the Respondent’s Twitter Account as set out in Schedule “A” to the Statement of Claim.⁸⁸

24. At the time the Respondent published the Primary Tweet:⁸⁹

- a. The Primary Tweet was available for download from the Respondent’s Twitter Account.
- b. About 66,700 Twitter accounts were following the Respondent’s Twitter Account.

25. The Respondent deleted the Primary Tweet on 30 March 2023.⁹⁰

⁸⁵ Defence, [43]

⁸⁶ Statement of Claim, [8] cf. Defence, [8]

⁸⁷ Statement of Claim, [9] cf. Defence, [9]

⁸⁸ Statement of Claim, [10] cf. Defence, [10]

⁸⁹ Statement of Claim, [11] cf. Defence, [11(a)(i) and (ii)]

⁹⁰ Defence, [12(a)]

26. Prior to the time that the Respondent deleted the Primary Tweet, the Primary Tweet was commented on, retweeted and seen by people.⁹¹
27. Twitter recorded at least 6,171 “views” of the Primary Tweet, prior to the time the Respondent deleted the Primary Tweet.⁹²
28. The Primary Tweet was posted as a comment on the Metcalfe Tweet, which identified the Applicant by name.⁹³

Public statements after the Primary Tweet

29. On 30 March 2023, the Applicant published a tweet with a photograph of himself and his husband with the words “*For those wondering how I’m doing after Latham’s homophobic attacks today, I’m fine and I’m more motivated than ever to deliver long overdue LGBTIQA+ reforms... and I have the most handsome husband.*”⁹⁴
30. On 30 March 2023, Senator Pauline Hanson posted a video to the public in which she said:

I am responding to the comments made by Mark Latham on social media. I want you to know that I don’t condone them and neither do my members of parliament or party associates.

I think they are disgusting.

I’ve actually tried to ring Mark a couple of times, to no avail, and I have clearly sent a text message to him telling him my views and also I’ve asked him to give the people an apology.

*I will leave it at that. It is now over to Mark to answer the people.*⁹⁵

31. On 30 March 2023, Penny Sharpe MLC said:

I was physically sickened by that tweet.

Homophobia is always unacceptable and there is never an excuse. Mr Latham should apologise to Alex Greenwich immediately.

It’s been a long time since I’ve seen something that awful said out loud in public, it really is completely unacceptable.

⁹¹ Statement of Claim, [13] cf. Defence, [13(a)]

⁹² Statement of Claim, [13] cf. Defence, [13(b)]

⁹³ Statement of Claim, [14] cf. Defence, [14(b)]

⁹⁴ Defence [37(a)]

⁹⁵ Defence [49(a)]

People have been bullied over these issues over time. I've worked with families whose sons were murdered in the 70s and 80s through violence against gay men.

This is a serious matter and it brings back a lot of terrible memories that really I thought we had gotten through.

They shouldn't be listening to this kind of material, we love every person no matter who they are.

It also doesn't reflect who New South Wales is, we've just had World Pride, this incredible celebration of inclusion and people really being able to be who they are.⁹⁶

32. On 30 March 2023, Jenny Leong MLA said:

The hateful homophobic and transphobic bile that spews from former Labor leader turned One Nation MP Mark Latham demonstrates why no political party or independent representative should engage with him.

Being an elected representative doesn't give him a free pass.

The Greens are committed to working with all elected members of parliament across the political spectrum who show respect for equality and recognise that we all collectively play a role in stamping out discrimination in our communities – One Nation clearly doesn't meet this baseline.

It is clear that all political parties, all independents elected to the new parliament need to take a stand and refuse to work with this toxic man.

The only reason One Nation gets any power in our democracy and our parliaments is because political parties and elected representatives continue to work with them.⁹⁷

33. On 30 March 2023, Prime Minister Anthony Albanese said:

I am concerned that with social media we seem to have a circumstance whereby people would say things through various applications they'd never say to someone face to face and we know that can be very hurtful and it can have drastic consequences.⁹⁸

34. On 30 March 2023, journalist Deborah Knight said:

⁹⁶ Defence, [49(b)]

⁹⁷ Defence, [49(c)]

⁹⁸ Defence, [49(d)]

Mark Latham's tweet is off the charts.

I won't repeat it, you can't, what he's written is something you would never say.

Mark Latham needs to take a good hard look in the mirror for posting stuff like this.⁹⁹

35. On 30 March 2023, commentator Andrew Bolt said:

Now to the crisis in Pauline Hanson's One Nation. It's a crisis called Mark Latham. I would ask Mark Latham to come on tonight to explain what went wrong for him in the NSW election last weekend. He is the leader of One Nation there and he didn't do as well as be expected. But as you can see no Mark nor will there ever be.

Now I know you've you know that we've had blow-ups before. I mean last year I called him out for his racist joke about Channel 9 journalist Sarah Abo. Latham hates criticism he accused me of many foul and false things and that was it with us even though I had supported him for quite a while. I didn't and you didn't expect him to come back on my show but he was the leader of One Nation in NSW and he was promoting some sensible policies at last week's election so I did ask him on to explain them and I told you that the voters and the policies were more important than my feelings. Now Latham did ask to come on again just before the election. I said fine we talk the elections again but never again.

Latham this morning put a tweet so disgusting that even he felt ashamed after a while and eventually deleted it but much too late. This tweet was so disgusting, so homophobic, so vile in a pornographic way that I cannot even hint about what he said about a gay politician Alex Greenwich. But it was the kind of thing a scumbag would write. A drunk one, except he wrote it not at night but at 10:30am this morning. Now what was going through his mind I do not know, but not for the first time I wonder if he has some issue that needs seeing to. Now Latham seems to have a self-destruct button and he is punching it far too often. Many former colleagues in Labor refuse to speak to him after he betrayed them in a seeming rage. Betrayed secrets and all sorts of things. There was also the Abo joke. There was a fight with a taxi driver whose arm was broken. And now this tweet which I don't think he will ever live down.

He will be a pariah and not just here at Sky. I wonder how he will be able to function effectively as a political leader who has earned the contempt of so many

⁹⁹ Defence, [49(e)]

for his abuse, particularly the media. And this is a real problem for Pauline Hanson, the national One Nation leader. Latham taints her. She's tried to rein him in but now this. Doesn't Latham even know that Hanson's closest adviser for years, a really top bloke, is himself gay. Hanson is of course furious. She doesn't trust herself to come on herself tonight in case she really explodes and makes things worse but she did record this response and send it to us.

...

We have also tried to contact Mark but also no response. Mark get treatment. You are such a clever man. You have so much to offer. When you are up you can be wonderful company and also kind but you seem to have a death wish. You crack and then say things that are so cruel and so vicious and now so homophobic that the one who is hurt most is you. Goodbye and good luck.¹⁰⁰

36. On 31 March 2023, Premier Chris Minns said:

I think that they're vile and shameful comments and I think he revealed himself to be a bigot. They have been directed at a member of parliament ... who is extraordinarily effective and manages to elevate the conversation and make major changes in the state.

One of the things that can't be forgotten is that comments like this, even though in and of themselves they're terrible, they unleash ghouls on people like Alex. It's not what we need in public life.

Members of the LGBTQI community are two and a half times more likely to require urgent medical attention due to mental health conditions and deserve the support of political leaders.

There should be an unambiguous and universal condemnation of these comments.¹⁰¹

37. On 31 March 2023, the Applicant made a public statement that included the words "*This has obviously been hurtful for me. I had a bit of a cry late last yesterday at the end of the day. After being in this gig for a decade and getting re-elected. I didn't think I'd still be subjected to homophobic abuse.*"¹⁰²

¹⁰⁰ Defence, [49(f)]

¹⁰¹ Defence, [49(g)]

¹⁰² Defence, [37(b)(ii)]

38. On 31 March 2023, the Applicant appeared and spoke on *The Project* television program on Network Ten.¹⁰³

Publication of the DT Quotes

39. On or about 1 April 2023, the Respondent made and thereby published the following statements to a journalist, Linda Silmalis (being the DT Quotes):¹⁰⁴

“Sometimes in public life when you throw out insults they come back at you harder and truer...So boo-hoo Alex Greenwich.”

...

“When he calls someone a disgusting human being for attending a meeting in a church hall, maybe attention will turn to some of his habits.”

...

“Greenwich goes into schools talking to kids about being gay. I didn’t want to be accused of anything similar, leaving that kind of content on my socials.”

40. On or about 1 April 2023, the DT Quotes were republished on www.dailytelegraph.com.au in an article titled, ‘*Boo-hoo’: Latham doubles down after homophobic tweet outcry*’ (being **the DT Article**).¹⁰⁵

41. As at the date of the Statement of Claim being about 26 May 2023, the DT Article was accessible at the website recorded in paragraph 19 of the Statement of Claim.¹⁰⁶

42. The DT Article is in the form set out in Schedule B to the Statement of Claim, and the DT Quotes are contained in paragraphs 9, 10, 11 and 12 of Schedule B.¹⁰⁷

43. The DT Quotes were of and concerning the Applicant.¹⁰⁸

44. The Respondent published the DT Quotes to journalist, Linda Silmalis, after the Respondent published the Primary Tweet.¹⁰⁹

45. The Respondent knew and intended that Linda Silmalis, to whom he published the DT Quotes, would republish the DT Quotes.¹¹⁰

¹⁰³ Defence, [37(b)(iii)]

¹⁰⁴ Statement of Claim, [18] cf. Defence, [18]

¹⁰⁵ Statement of Claim, [19] cf. Defence, [19]

¹⁰⁶ Statement of Claim, [19] cf. Defence, [19]

¹⁰⁷ Statement of Claim, [21] cf. Defence, [21]

¹⁰⁸ Statement of Claim, [23] cf. Defence, [23]

¹⁰⁹ Defence, [34(a)]

¹¹⁰ Defence, [20(a)(i)]

46. The Respondent admits it was a natural and probable consequence of the publication of the DT Quotes to Linda Silmalis that she would republish the DT Quotes.¹¹¹

Publications following the Primary Tweet/DT Quotes

47. The Primary Tweet was reported on by the news media, including (**the Primary Tweet Reports**):

- a. On 30 March 2023 at 5:12pm, an article was published by *The West Australian*, authored by Farid Farid and Jacob Shteyman, titled, '*Pauline Hanson slams Mark Latham for homophobic tweet*', which was accessible online as alleged by the Applicant.¹¹²
- b. On 30 March 2023 at 5:58pm, an article was published by *The Guardian Australia*, authored by Tamsin Rose, titled, '*Pauline Hanson calls on Mark Latham to apologise for disgusting homophobic tweet*', which was accessible online as alleged by the Applicant.¹¹³
- c. On 30 March 2023 at 6:59pm, an article was published on *Nine News*, authored by Daniel Jeffrey, titled, '*One Nation NSW leader Mark Latham blasted for 'disgusting' homophobic tweet*', which was accessible online as alleged by the Applicant.¹¹⁴
- d. On 30 March 2023 at 5:44pm, an article was published on *ABC News*, authored by Paige Cockburn, titled, '*One Nation NSW leader Mark Latham under fire for graphic tweet directed at Alex Greenwich*', which was accessible online as alleged by the Applicant.¹¹⁵
- e. On 30 March 2023 at 5:54pm, an article was published on the *Special Broadcasting Service* (republishing *AAP* content), and updated on 31 March 2023 at 6:51am, titled, '*'Disgusting': Pauline Hanson rebukes Mark Latham for homophobic tweet to fellow MP*', which was accessible online as alleged by the Applicant.¹¹⁶
- f. On 30 March 2023 at 1:50pm, an article was published on *Daily Mail Australia*, and updated on 30 March 2023 at 6:46pm, titled, '*The 'appalling' Mark Latham tweet*

¹¹¹ Defence, [20(a)(ii)]

¹¹² Statement of Claim, [30.4(a)(xi)]

¹¹³ Statement of Claim, [30.4(a)(i)]

¹¹⁴ Statement of Claim, [30.4(a)(iii)]

¹¹⁵ Statement of Claim, [30.4(a)(iv)]

¹¹⁶ Statement of Claim, [30.4(a)(v)]

directed at a rival who called him a ‘disgusting human being’ – and it’s shocked the political world’, which was accessible online as alleged by the Applicant.¹¹⁷

- g. On 30 March 2023, an article was published on *Shepparton News* (republishing AAP content), titled, *‘Mark Latham slammed for homophobic tweet at fellow MP’*, which was accessible online as alleged by the Applicant.¹¹⁸
- h. On 30 March 2023, an article was published by the *Riverine Herald* (republishing AAP content), titled, *‘Mark Latham slammed for homophobic tweet at fellow MP’*, which was accessible online as alleged by the Applicant.¹¹⁹
- i. On 30 March 2023 at 9:00pm, an article was published on *Sky News*, authored by Patrick Hannaford, titled, *‘Andrew Bolt has unleashed on Mark Latham ‘disgusting and depraved’ homophobic tweet targeting NSW MP Alex Greenwich’*, which was accessible online as alleged by the Applicant.¹²⁰
- j. On 30 March 2023, an article was published on *Countrynews.com.au* (republishing AAP content), titled, *‘Mark Latham slammed for homophobic tweet at fellow MP’*, which was accessible online as alleged by the Applicant.¹²¹
- k. On 31 March 2023, an article was published by *Crikey*, authored by John Buckley, titled, *“‘Disgusting’ Mark Latham tweet draws condemnation from all corner of politics’*, which was accessible online as alleged by the Applicant.¹²²
- l. On 31 March 2023 at 2:38pm, an article was published by the *Canberra Times*, authored by Phoebe Loomes, and updated at 2:43pm, titled, *‘Premier slams ‘vile, shameful’ homophobic Latham tweet’*, which was accessible online as alleged by the Applicant.¹²³
- m. On 31 March 2023 at 4:33pm, an article was published by *Australian Racing Greyhound*, authored by Josh Spasaro, titled, *‘Will greyhound fans support Mark Latham after vile tweet?’*, which was accessible online as alleged by the Applicant.¹²⁴
- n. On 31 March 2023 at 2:38pm, an article was published by the *Port Stephens Examiner*, authored by Phoebe Loomes, updated on 31 March 2023 at 2:43pm,

¹¹⁷ Statement of Claim, [30.4(a)(vi)]

¹¹⁸ Statement of Claim, [30.4(a)(viii)]

¹¹⁹ Statement of Claim, [30.4(a)(ix)]

¹²⁰ Statement of Claim, [30.4(a)(x)]

¹²¹ Statemen of Claim, [30.4(a)(xiv)]

¹²² Statement of Claim, [30.4(a)(vii)]

¹²³ Statement of Claim, [30.4(a)(xii)]

¹²⁴ Statement of Claim, [30.4(a)(xiii)]

titled, *'Premier slams 'vile, shameful' homophobic Latham tweet'*, which was accessible online as alleged by the Applicant.¹²⁵

- o. On 1 April 2023 at 7:36am, an article was published on new.com.au, authored by Eli Green, titled, *'NSW One Nation leader breaks silence after homophobic tweet to Gap MP'*, which was accessible online as alleged by the Applicant.¹²⁶

48. On 31 March 2023, @9NewsSyd tweeted, *"Premier Chris Minns unleashed upon Mark Latham regarding his comments towards Sydney MP Mark Greenwich Minns called out the One Nation Leader during a Q&A at the Lifeline International President's lunch @sophie_walsh9 #9news"* (**the Sophie Walsh Tweet**).¹²⁷

49. As to the Sophie Walsh Tweet:

- a. As at the date of the Statement of Claim, the Sophie Walsh Tweet had 16 replies; 5 retweets; 6 likes; and 6,071 views.¹²⁸

Further conduct by the Respondent (noting the Respondent denies the facts alleged about his conduct in paragraph 33.5 of the Statement of Claim)

50. On or about 1 April 2023, the Respondent published a tweet to the Respondent's Twitter Account containing the words, *"I'm only saying what normal people know to be the truth. The elites deny this because they are caught up in a weird Identity Politics Cult. In which Alphabet people are accorded automatic sainthood. Just look at the trans shooter in the US!! [tongue poke emoji]"* (**the Normal People Tweet**).¹²⁹

51. As at the date of the Statement of Claim, the Normal People Tweet had 109,200 views; 276 retweets; 45 quotes; 2,041 like; and 12 bookmarks.¹³⁰

52. On 27 April 2023, the Respondent gave an interview to Chris Smith on TNT Radio, accessible online as alleged by the Applicant (**the Radio Interview**).¹³¹

53. As to the Radio Interview:

- a. The Radio Interview was in the terms as alleged in Schedule C to the Statement of Claim.¹³²

¹²⁵ Statement of Claim, [30.4(a)(xv)]

¹²⁶ Statement of Claim, [30.4(a)(ii)]

¹²⁷ Statement of Claim, [30.4(g)]

¹²⁸ Statement of Claim, [30.4(g)(i)]

¹²⁹ Statement of Claim, [33.5(ii)]

¹³⁰ Statement of Claim, [33.5(ii)]

¹³¹ Statement of Claim, [33.5(iv)]

¹³² Statement of Claim, [33.5(iv)(A)] and Schedule C

- b. As at the date of the Statement of Claim, the Radio Interview had been downloaded 2,200 times on the TNT podcast website at the hyperlink pleaded in paragraph 33.5(E) of the Statement of Claim.¹³³
- c. On or about 27 April 2023, TNT Radio advertised the Radio Interview on Twitter (**the Radio Interview Tweet**), by setting out the times the Radio Interview would “air” in Brisbane, London and New York.¹³⁴
- d. The Radio Interview Tweet stated, “[*star emoji*] **EXCLUSIVE** [*star emoji*] *Chris Smith talks with Australian politician and media commentator Mark Latham next on TNT Radio. #listenlive https://tntradio.live @chrissmithonair @RealMarkLatham 2PM (BRISBANE) 5AM (LONDON) MIDNIGHT (NEW YORK) #tntradiolive #livenews #chrissmith #marklatham*”.¹³⁵
- e. As at the date of the Statement of Claim, the Radio Interview Tweet had 1, 299 views; 2 retweets; 1 quote and 7 likes.¹³⁶
- f. On 27 April 2023, Chris Smith posted on Twitter about the Radio Interview and as at the date of the Statement of Claim, that tweet had 10,400 views; 12 retweets; 2 quotes; and 69 likes.¹³⁷
- g. The Radio Interview Tweet was reported by other news outlets, including:
- i. In an article on the *Daily Mail Australia*, authored by Stephen Gibbs and published 27 April 2023 at 6:06pm and updated 28 April 2023 at 8:09am, with the headline, “*Mark Latham launches horrific new attack on gay men and makes the extraordinary claim ALL “straight men” feel the same*”, accessible online as alleged by the Applicant.¹³⁸
 - ii. In an article on *The Guardian Australia*, authored by Tamsin Rose and published on 28 April 2023 at 10:21am, with the headline, “*Mark Latham defends homophobic slurs, saying Pauline Hanson can’t understand “how straight men feel”*”, accessible online as alleged by the Applicant.¹³⁹

¹³³ Statement of Claim, [33.5(iv)(E)]

¹³⁴ Statement of Claim, [33.5(v)]

¹³⁵ Statement of Claim, [33.5(v)]

¹³⁶ Statement of Claim, [33.5(v)]

¹³⁷ Statement of Claim, [33.5(vi)]

¹³⁸ Statement of Claim, [33.5(vii)(A)]

¹³⁹ Statement of Claim, [33.5(vii)(B)]

- iii. In an article on *Q News*, authored by Jordan Hirst and published on 28 April 2023, with the headline, “*“Pukeworthy”: Mark Latham is ranting about gay sex again*”, accessible online as alleged by the Applicant.¹⁴⁰
 - iv. In an article on *OUT in Perth*, authored by ‘admin’ and published on 27 April 2023, with the headline, “*Mark Latham delivers a fresh series of homophobic remarks*”, accessible online as alleged by the Applicant.¹⁴¹
 - v. In an article on *Star Observer*, authored by Shibu Thomas and published on 28 April 2023, with the headline, “*One Nation’s Mark Latham Muses About Straight Men Thinking About Gay Sex*”, accessible online as alleged by the Applicant.¹⁴²
- h. On or about 27 April 2023, the Respondent retweeted the Radio Interview Tweet via the Respondent’s Twitter Account.¹⁴³
54. On or about 28 April 2023, the Respondent published on the Respondent’s Twitter Account, in the context of the NSW Premier Chris Minns attending radio personality, Kyle Sandilands’s wedding the next day, a tweet stating, “*I must be wonderfully Deplorable if Chris Minns wants to cancel me but he’s attending Kyle Sandilands wedding tomorrow, complete with organised crime figures and a convicted drug smuggler as best man!! Kyle has ‘picked on’ the disabled and Alphabet people even more than me [crying laughing emoji]*” (**the Alphabet Tweet**).¹⁴⁴
55. On 28 April 2023, the Respondent replied to the Alphabet Tweet stating, “*Where’s [Alex] Greenwich when you need him?*” (**Alphabet Reply Tweet**).¹⁴⁵
56. As at the date of the Statement of Claim, the Alphabet Reply Tweet had 12,300 views; 8 retweets; 1 quote and 100 likes.¹⁴⁶
57. On or about 29 April 2023, the Respondent reposted the Radio Interview on the Respondent’s Facebook Account, with the caption, “*Mark Latham clears up the facts about a recent controversy*”, which as of the date of the Statement of Claim had about 149 likes; 55 comments and 4 re-posts.¹⁴⁷

¹⁴⁰ Statement of Claim, [33.5(vii)(C)]

¹⁴¹ Statement of Claim, [33.5(vii)(D)]

¹⁴² Statement of Claim, [33.5(vii)(E)]

¹⁴³ Statement of Claim, [33.5(viii)]

¹⁴⁴ Statement of Claim, [33.5(x)]

¹⁴⁵ Statement of Claim, [33.5(xi)]

¹⁴⁶ Statement of Claim, [33.5(xi)]

¹⁴⁷ Statement of Claim, [33.5(ix)]

58. On 2 May 2023, in response to NSW politician and Twitter user, Abigail Boyd, using the Twitter handle @AbigailBoydMLC (**Abigail Boyd**), posting a link to an article in *The Sydney Morning Herald* titled, ‘NSW opposition leader vows to work with Latham despite homophobic slurs’, the Respondent tweeted, “*I’m very sorry for saying I hate the idea of having anal sex with another man. Has it become compulsory?*” (**the Abigail Boyd Tweet 1**).¹⁴⁸
59. As at the date of the Statement of Claim, the Abigail Boyd 1 Tweet had 84,700 views; 146 retweets; 24 quotes; 1,392 likes and 9 bookmarks.¹⁴⁹
60. On 2 May 2023, the Respondent tweeted, “*The Left has sexualised politics particularly through the predominance of LGBTQIAP+ issues. But of course, in the media double standard that applies, no one from the Right should ever participate in these debates and give their true opinion. We are lesser, disgusting human beings.*” as a reply to the Abigail Boyd Tweet 1 (**the Abigail Boyd Tweet 2**).¹⁵⁰
61. As at the date of the Statement of Claim, the Abigail Boyd Tweet 2 had 9,186 views; 33 retweets; 2 quotes and 461 likes.¹⁵¹
62. On 4 May 2023, the Respondent tweeted, “*I can’t win: I apologised here and now Alex Greenwich has referred this Tweet (and many others) to the NSW Anti-Discrimination Board for action. He’s obsessed with petty litigation against me for disagreeing with him*” (**the Can’t Win Tweet**).¹⁵²
63. As at the date of the Statement of Claim, the Can’t Win Tweet had 10,100 views; 21 retweets; 1 quote and 269 likes.¹⁵³
64. On 4 May 2023, the Respondent tweeted, “*Ultimately this is the great Greenwich crime: disagreeing with an entitled European Prince. Lawfare instead of sorting it out in the parliament to which we have both been elected. Should I take out an AVO for harassment?* [four crying, laughing emojis]” (**the AVO Tweet**).¹⁵⁴
65. As at the date of the Statement of Claim, the AVO Tweet had 5,587 views; 14 retweets and 128 likes.¹⁵⁵

¹⁴⁸ Statement of Claim, [33.5(xii)]

¹⁴⁹ Statement of Claim, [33.5(xii)]

¹⁵⁰ Statement of Claim, [33.5(xiii)]

¹⁵¹ Statement of Claim, [33.5(xiii)]

¹⁵² Statement of Claim, [33.5(xv)]

¹⁵³ Statement of Claim, [33.5(xv)]

¹⁵⁴ Statement of Claim, [33.5(xvi)]

¹⁵⁵ Statement of Claim, [33.5(xvi)]

Concerns notice

66. On 19 April 2023, being more than 28 days before the date of the Statement of Claim, the Applicant, through his lawyers, gave a concerns notice to the Respondent in accordance with the *Defamation Act* and its counterparts in the other States and Territories in relation to the matters complained of.¹⁵⁶

Date: 22 December 2023



Signed by Nicholas Stewart
Solicitor for the Applicant



Signed by Greg Leather
Solicitor for the Respondent

¹⁵⁶ Statement of Claim, [31] cf. Defence, [31]